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No. 03-

IN THE

Supreme Court of the United States

WILLIAM A. BORDERS, JR.,

Petitioner,

v.

DISTRICT OF COLUMBIA OFFICE OF BAR COUNSEL,

Respondent.

On Petition For Writ Of Certiorari To The District Of Columbia Court Of Appeals

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether, under Article II, section 2, clause 1 of the United States Constitution, a presidential pardon nullifies disabilities imposed solely on the basis of the underlying criminal conviction.

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INTRODUCTION

This case presents an interesting and important question of constitutional law relating to the scope of the President's pardon power. The District of Columbia's highest court held that an attorney who was disbarred as a result of a criminal conviction, and who later received a presidential pardon for that conviction, was not entitled to reinstatement to the Bar — notwithstanding the fact that his disbarment was based *solely* on the subsequently pardoned conviction. That decision conflicts with a venerable line of this Court's cases dating from the Civil War, which make clear that a presidential pardon "blots out" not only the conviction itself, but also any disabilities that attach as a result of the conviction. It also conflicts with the decision of the Seventh Circuit in *Bjerkan v. United States*, 529 F.2d 125 (1975), which specifically recognized that a State's deprivation of the right to work on the basis of a pardoned conviction would constitute an impermissible disability.

If allowed to stand, the decision below will have drastic consequences for the recipients of presidential pardons. Many States impose substantial disabilities on individuals who are convicted of state or federal felonies, including limitations on the right to vote, the right to carry firearms, and (as here) the right to be admitted to the Bar. By allowing such disabilities to remain in effect even where the underlying conviction has been wiped off the books, the lower court imposed draconian restrictions on the President's pardon power, potentially rendering the exercise of that power a purely symbolic act. While the use of the pardon power may often be controversial, there can be no doubt that the power is a muscular one. Because the decision below conflicts with the decisions of this Court and a federal court of appeals, and because it threatens to curtail a fundamental enumerated power, *certiorari* should be granted.

OPINIONS BELOW

The opinion of the District of Columbia Court of Appeals is reported at 797 A.2d 716 and reprinted in the appendix ("App.") at 5a-9a. The unreported order denying the petition for rehearing *en banc* is reprinted at App. 1a-4a.

JURISDICTION

The D.C. Court of Appeals entered judgment on May 2, 2002. Petitioner timely filed a petition for rehearing *en banc*, which was denied on April 16, 2003. On July 1, 2003, the Chief Justice extended the time for filing this petition until August 14, 2003. This Court has jurisdiction pursuant to 28 U.S.C. § 1257(a)-(b).

PERTINENT CONSTITUTIONAL AND STATUTORY PROVISIONS

Article II, section 2, clause 1 of the United States Constitution states, in relevant part, as follows:

> The President * * * shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.

Section 11-2503(a) of the D.C. Code states as follows:

> When a member of the bar of the District of Columbia Court of Appeals is convicted of an offense involving moral turpitude, and a certified copy of the conviction is presented to the court, the court shall, pending final determination of an appeal from the conviction, suspend the member of the bar from practice. Upon reversal of the conviction the court may vacate or modify the suspension. If a final judgment of conviction is certified to the court, the name of the member of the bar so convicted shall be struck from the roll of the members of the bar and such person shall thereafter cease to be a member. Upon the granting of a pardon to

a member so convicted, the court may vacate or modify the order of disbarment.

STATEMENT OF THE CASE

1. Petitioner William A. Borders, Jr., is 64 years old. He was once a prominent attorney and president of the National Bar Association, the Nation's leading organization of African-American lawyers. More than twenty years ago, he was convicted in federal court of conspiracy to solicit bribes from criminal defendants in exchange for lenient treatment by his friend, United States District Judge Alcee L. Hastings. *See United States v. Borders*, 693 F.2d 1318, 1319 (11th Cir. 1982).[1] The Eleventh Circuit affirmed the conviction, *see id.* at 1330, and this Court denied *certiorari*, *see* 461 U.S. 905 (1983). Borders was sentenced to five years in prison. *See Borders*, 693 F.2d at 1319.

In 1983, the D.C. Court of Appeals disbarred Borders in an unpublished order. *See* App. 10a-11a. In doing so, the court relied solely on D.C. Code § 11-2503(a), which requires disbarment when a member of the Bar is "convicted of an offense involving moral turpitude." *See* App. 11a. Because disbarment attached automatically under this provision as a result of Borders' *convictions*, *see In re McBride*, 602 A.2d 626, 630 n.4 (D.C. 1992), the court did not reach the issue whether sanctions were appropriate for Borders' underlying *conduct* under other potentially applicable disciplinary provisions.[2]

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[1] Hastings was acquitted of criminal charges, but was subsequently impeached and removed from the bench. In 1992, he was elected to Congress, where he now serves as the ranking Democrat on the House Permanent Select Committee on Intelligence. *See* William Raspberry, *Pardoned But Still Disbarred*, Wash. Post, June 23, 2003, at A21.

[2] For example, D.C. Rule of Professional Conduct 8.4 (like its predecessor provision in the D.C. Code of Professional Responsibility) states that "[i]t is professional misconduct for a lawyer to * * * [e]ngage in conduct involving dishonesty, fraud, deceit or misrepresentation," or to "[e]ngage in conduct

In 1993, Borders filed a petition for reinstatement with the D.C. Board on Professional Responsibility. That petition was denied, and the D.C. Court of Appeals affirmed the denial. *See In re Borders*, 665 A.2d 1381, 1385 (D.C. 1995). The court acknowledged that Borders had expressed remorse for his conduct and was competent to practice law, *see id.* at 1383, and recognized his "admittedly impressive character witnesses," *id.* at 1385. Nevertheless, it affirmed the denial of reinstatement on the ground that Borders had not testified against Hastings or provided an explanation for his conduct. *See id.* at 1383-85.

In 1998, Borders filed a second petition for reinstatement with the Board on Professional Responsibility. That successive petition was also denied, and no appeal was taken.

2. On his last day in office — January 20, 2001 — President Clinton issued a full and unconditional pardon to Borders. *See* App. 5a-6a. Borders subsequently filed a motion in the D.C. Court of Appeals to vacate its original order of disbarment, on the ground that the presidential pardon automatically nullified the disbarment, as well as the federal convictions on which the disbarment was solely based. *See id.* at 6a.

The D.C. Court of Appeals denied the motion. *See id.* at 5a-9a. The court reasoned that the relevant statute, D.C. Code § 11-2503(a), permitted, but did not require, the court to order reinstatement. *See id.* at 6a-7a. The court relied heavily on its prior decision in *In re Abrams*, 689 A.2d 6 (D.C. 1997) (*en banc*), in which it held, by a 5-4 margin, that reinstatement was not constitutionally required where the original disbarment rested on independent findings about the petitioner's underlying *conduct*. In response to Borders' argument that reinstatement was constitutionally required here because the disbarment

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that seriously interferes with the administration of justice." Unlike D.C. Code § 11-2503(a), however, Rule 8.4 does not specify any particular sanction for its violation.

rested solely on the pardoned *conviction*, *see* C.A. Mot. to Vacate 3, the court recognized that there was language in *Abrams* to that effect, *see* App. 8a.[3] But it summarily distinguished that language as dicta. *See id.* The court suggested that Borders could again petition for reinstatement with the Board on Professional Responsibility, but noted that the presidential pardon would be only one factor to be taken into account in the consideration of that petition. *See id.* at 9a. Judge Steadman reluctantly concurred, noting that he was bound by the Court's earlier decision in *Abrams* (from which he had dissented). *See id.*

Borders then filed a petition for rehearing *en banc*. Almost ten months after the petition was filed, the *en banc* court denied the petition by a 4-3 vote, with two of the court's nine members recusing themselves. *See id.* at 1a-2a. Judge Reid, joined by Chief Judge Wagner and Judge Washington, dissented and filed a separate opinion. *See id.* at 2a-4a. She reasoned that the case presented the "purely legal" issue of whether Borders was entitled to automatic reinstatement, and therefore that it was improper to require Borders to petition for reinstatement. *Id.* at 2a-3a. This petition follows.

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[3] In *Abrams*, the court stated as follows:

> Bar Counsel has not asked the court to disbar Abrams on account of his having been convicted of a crime of moral turpitude. *Cf. In re Hopmayer*, 625 A.2d 290 (D.C. 1993); D.C. Code § 11-2503(a) (1996). The presidential pardon would undoubtedly have precluded a sanction based on Abrams' conviction, and Abrams did not, in any event, commit such a crime.

689 A.2d at 11.

REASON FOR GRANTING THE WRIT

THE D.C. COURT OF APPEALS ERRED BY HOLDING THAT A PRESIDENTIAL PARDON DOES NOT NULLIFY DISABILITIES IMPOSED SOLELY ON THE BASIS OF THE UNDERLYING CONVICTION.

This Court should grant *certiorari* because the decision below conflicts with numerous decisions from this Court and with the decision of a federal court of appeals, and because the petition presents a recurring question of exceptional importance. *See* S. Ct. R. 10.

A. The Decision Below Conflicts With Prior Decisions Of This Court.

This Court has long held that a presidential pardon nullifies not only the pardoned conviction itself, but also any disabilities that attach as a result of the conviction. The D.C. Court of Appeals' decision simply cannot be reconciled with this Court's Pardon Clause cases.

1. Article II, section 2, clause 1 of the United States Constitution states, in relevant part, that "[t]he President * * * shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment." This Court has noted that, aside from the exception for impeachment, the President's pardon power was understood at the time of the Framing to have the same scope as that exercised by the King of England. *See Ex parte Grossman*, 267 U.S. 87, 112-13 (1925) (rejecting proposition that "there is any substantial difference * * * between the executive power of pardon in our government and the king's prerogative"); *Ex parte Wells*, 59 U.S. (18 How.) 307, 311 (1855) (noting that, "when the words [']to grant pardons['] were used in the constitution, they conveyed to the mind the authority as exercised by the English crown"); *cf.* The Federalist No. 69, at 418-19 (Clinton Rossiter ed. 1961) (Alexander Hamilton) (comparing the President's pardon power to that of the

Governor of New York). Under English law, the King's pardon power unambiguously extended not only to the underlying criminal conviction itself, but also to "all the dependencies, penalties, and disabilities incident unto it." *Cuddington v. Wilkins*, 80 Eng. Rep. 231, 232 (K.B. 1614).

2. In a long line of cases in the immediate aftermath of the Civil War, this Court expressly affirmed the principle that the President's pardon power extended to any disabilities that attach as a result of the pardoned conviction.

The seminal case on the President's pardon power remains *Ex parte Garland*, 71 U.S. (4 Wall.) 333 (1866). That case, like many of the others in the line, involved a Confederate official who was pardoned for his wartime actions. *See id.* at 375. Petitioner was a member of this Court's Bar who had served in the Confederate Congress. *See id.* In 1865, the United States Congress passed a law requiring all members of the Supreme Court Bar to take a loyalty oath, stating, *inter alia*, that they had never served an enemy of the United States. *See id.* at 374-75, 376. Petitioner sought permission to continue as a member of the Bar without taking the loyalty oath, contending that the pardon relieved him of any obligation to take the oath. *See id.* at 375.

The Court granted the petition, based in part on its interpretation of the pardon power. *See id.* at 381. In an oft-quoted passage on the "effect and operation" of that power, the Court stated as follows:

> A pardon reaches both the punishment prescribed for the offence and the guilt of the offender; and when the pardon is full, it releases the punishment and blots out of existence the guilt, so that in the eye of the law the offender is as innocent as if he had never committed the offence. If granted before conviction, it prevents any of the penalties and disabilities consequent upon conviction from attaching; *if granted after conviction, it*

> *removes the penalties and disabilities, and restores him to all his civil rights*; it makes him, as it were, a new man, and gives him a new credit and capacity.

Id. at 380-81 (emphasis added). *Garland* therefore stands not only for the general proposition that the President's pardon power nullifies any disabilities that attach as a result of the pardoned conviction, but also for the specific proposition that deprivation of the ability to practice law constitutes a "disability" or "punishment" that can be nullified by a pardon. *See id.* at 377 (noting that "exclusion from any of the professions or any of the ordinary avocations of life for past conduct can be regarded in no other light than as punishment for such conduct"); *Cummings v. Missouri*, 71 U.S. (4 Wall.) 277, 320 (1866) (noting, in companion case to *Garland*, that "[t]he deprivation of any rights, civil or political, previously enjoyed, may be punishment").[4]

In *United States v. Padelford*, 76 U.S. (9 Wall.) 531 (1869), the plaintiff sought to recover the proceeds of seized property under the Captured and Abandoned Property Act, which required the claimant to show that he had never given any aid or comfort to the Confederacy. *See id.* at 537-38. Citing *Garland*, the Court held that, as a result of his pardon for his involvement with the Confederacy, the plaintiff was "purged of whatever offence against the laws of the United States he had committed * * * and relieved from any penalty which he might have incurred." *Id.* at 543. The Court therefore concluded that the plaintiff's right to the property "remain[ed] perfect," and allowed the plaintiff to recover the proceeds. *Id.*

The Court reached a similar result in *Carlisle v. United States*, 83 U.S. (16 Wall.) 147 (1872). *Carlisle* involved plaintiffs who, like the plaintiff in *Padelford*, had received

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[4] This Court has described bar disciplinary proceedings as "adversary proceedings of a quasi-criminal nature." *In re Ruffalo*, 390 U.S. 544, 551 (1968).

presidential pardons and were attempting to recover property under the Captured and Abandoned Property Act. The Court recognized that "[t]here has been some difference of opinion among the members of the court as to cases covered by the pardon of the President, but there has been none as to the effect and operation of a pardon in cases where it applies." *Id.* at 151. The Court noted that "[a]ll have agreed that the pardon not merely releases the offender from the punishment prescribed for the offence, but that it obliterates in legal contemplation the offence itself." *Id.*

In *Osborn v. United States*, 91 U.S. 474 (1875), another case involving the confiscation of property, the Court again restored proceeds as a result of a presidential pardon. The Court reasoned that "[i]t is of the very essence of a pardon that it releases the offender from the consequences of his offence," *id.* at 477, and added that "the penalty of forfeiture annexed to the commission of the offence must fall with the pardon of the offence itself," *id.* Citing *Carlisle*, the Court concluded that the pardon "releas[es] the offence, obliterat[es] it in legal contemplation, [and] removes the ground of the forefeiture upon which the decree rests." *Id.* at 478 (citation omitted).

Finally, in *Knote v. United States*, 95 U.S. 149 (1877), another confiscation case, the Court gave perhaps its fullest post-*Garland* exposition of the scope of the pardon power. In again restoring proceeds from confiscated property to the recipient of a presidential pardon, the Court characterized a pardon as "an act of grace" that "releases the offender from all disabilities imposed by the offence, and restores to him all his civil rights." *Id.* at 153. The Court observed that a pardon "gives [the recipient] a new credit and capacity, and rehabilitates him to that extent in his former position" and added that "it so far blots out the offence, that afterwards it cannot be imputed to him to prevent the assertion of his legal rights." *Id.*

3. Notably, the Court has applied similar principles in

determining the effect of a presidential pardon on disabilities that attach by operation of *state*, as well as *federal*, law.[5] In *Carlesi v. New York*, 233 U.S. 51 (1914), the Court considered whether New York could treat a defendant as a repeat offender for sentencing purposes on the basis of a prior federal conviction for which the defendant had been pardoned. *See id.* at 55-56. The Court upheld the defendant's sentence, but on the narrow ground that the defendant was being "punished" only for the new offense, not for the prior one. *See id.* at 57-58; *cf. Gryger v. Burke*, 334 U.S. 728, 732 (1948) (rejecting double-jeopardy challenge to repeat-offender statute on ground that sentence constituted "a stiffened penalty for the latest crime," rather than a second penalty for the earlier one). The Court expressly stated that, "if the act of the state in taking into consideration a prior conviction of [a federal offense] despite a pardon was in any just sense a punishment for such prior crime, * * * the act of the state would be void because destroying or circumscribing the effect of the pardon granted." *Carlesi*, 233 U.S. at 57. The Court therefore recognized that state disabilities based on a pardoned conviction, like federal ones, would fall along with the conviction itself.

4. Since the Court's decisions in the post-Civil War pardon cases, commentators have recognized that a presidential pardon nullifies at least those disabilities that attach automatically as a result of the conviction itself, even if it does not "blot out guilt" in a more generic sense by nullifying disabilities that are based on the same conduct that underlies the conviction.[6] In a

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[5] The District of Columbia Code, of course, is enacted by Congress and thus constitutes federal law. *See, e.g., Palmore v. United States*, 411 U.S. 389, 398 (1973).

[6] Where a disability imposed by state law is based on the conduct that underlies a federal conviction, that disability is analogous to a state criminal sanction for that conduct. This Court's double-jeopardy jurisprudence recognizes that "an act denounced as crime by both national and state sovereignties is an offense against the piece and dignity of both and may be punished by each." *United States v. Lanza*, 260 U.S. 377, 382 (1922).

frequently cited law-review article on the scope of the pardon power, Professor Samuel Williston drew precisely this distinction in discussing the Court's post-Civil War decisions:

> The true line of distinction seems to be this: The pardon removes all legal punishment for the offence. Therefore if the mere conviction involves certain disqualifications *which would not follow from the commission of the crime without conviction*, the pardon removes such disqualifications. On the other hand, if character is a necessary qualification and the commission of the crime would disqualify even though there had been no criminal prosecution for the crime, the fact that the criminal has been convicted and pardoned does not make him any more eligible.

Samuel Williston, *Does a Pardon Blot Out Guilt?*, 28 Harv. L. Rev. 647, 653 (1915) (emphasis added).

Similarly, the Office of Legal Counsel, in a 1995 memorandum, recognized this distinction in the specific context of sanctions imposed on attorneys for conduct that is the subject of a pardoned conviction:

> For example, an attorney charged with a criminal offense for which he or she is later pardoned by the President would be relieved of all consequences *that attached solely by reason of his commission of the offense*. However, the pardon would not necessarily prevent a local or state bar from disciplining the attorney, *if it independently determined that the underlying conduct, or some portion of it, violated one of its canons of ethics*. In those instances, the bar would not have based its decision to disbar or sanction the attorney on the fact that the attorney had violated the criminal laws of the United States, but rather would have conducted an inquiry into the conduct and determined that an ethical violation had occurred.

Office of Legal Counsel, United States Department of Justice, Memorandum for the Pardon Attorney, June 19, 1995, *available at* http://www.usdoj.gov/olc/pardon3.19.htm (emphases added).

At a minimum, therefore, because the disbarment here "attached solely by reason of" the pardoned conviction, and because there was no "independent[] determin[ation]" that the underlying conduct violated the D.C. Code of Professional Responsibility, the disbarment, like the conviction on which it was based, must fall. To the extent that D.C. Code § 11-2503(a) suggests that reinstatement to the Bar is permissive, rather than mandatory, in these circumstances, it is inconsistent with the President's pardon power, and therefore must yield. *See, e.g., Public Citizen v. Department of Justice*, 491 U.S. 440, 485 (1989) (Kennedy, J., concurring in the judgment); *Schick v. Reed*, 419 U.S. 256, 266 (1974); *United States v. Klein*, 80 U.S. (13 Wall.) 128, 147-48 (1871). The D.C. Court of Appeals' decision not to reinstate petitioner contravenes this Court's longstanding view of the scope of the President's pardon power, and *certiorari* is therefore warranted.

B. The Decision Below Conflicts With A Decision Of A Federal Court of Appeals.

The D.C. Court of Appeals' decision is in conflict not only with numerous cases from this Court, but also with the Seventh Circuit's decision in *Bjerkan v. United States*, 529 F.2d 125 (1975). *Certiorari* is warranted on this basis as well.

In *Bjerkan*, the court considered whether a pardoned individual, who was no longer serving time in prison by virtue of his pardon, was nevertheless in "custody" for purposes of pursuing a § 2255 petition. The petitioner relied on *Carafas v. LaVallee*, 391 U.S. 234 (1968), in which this Court held that a habeas petitioner could be in "custody" (and thereby pursue his petition) even if he was no longer in prison, due to the "collateral consequences" that flowed from a prior conviction,

such as the loss of the rights to vote, serve on a jury, and work in certain professions. *See id.* at 237-38. The question presented in *Bjerkan*, therefore, was "whether a full pardon eliminates all 'collateral consequences' of the petitioner's conviction," thereby barring him from pursuing his habeas petition. *Bjerkan*, 529 F.2d at 126.

The Seventh Circuit held that it did, and therefore concluded that the case was moot. The court reasoned that a pardon "restores all [of a person's] basic civil rights, both state and federal." *Id.* at 127. Relying on this Court's decision in *Carlesi*, the Seventh Circuit reasoned that a State "may not take cognizance of the offense pardoned in any way which would constitute a 'punishment.'" *Id.* at 127-28. The court reasoned that "[c]ommon sense would seem to indicate that the deprivation of certain basic civil rights resulting from a felony conviction constitutes a 'punishment.'" *Id.* at 128. Citing this Court's decision in *Cummings* (the sister case to *Garland*), and Professor Williston's article on the scope of the pardon power, the court concluded that "any deprivation of a person's basic civil rights, including the right to vote, the right to serve on juries and *the right to work in certain professions*, by a state on account of a federal conviction would constitute a punishment." *Id.* at 128 & n.2 (emphasis added). The court added that, "[i]f the conviction were pardoned, as it was here, such attempted punishment would constitute a restriction on the legitimate, constitutional power of the President to pardon an offense against the United States and would be void as circumscribing and nullifying that power." *Id.* at 128.

The Seventh Circuit proceeded to reject the argument that allowing a presidential pardon to nullify disabilities created by state law would raise federalism concerns. The court acknowledged that the Pardon Clause gave the President the power to pardon only federal crimes, but reasoned that the President's power with regard to those crimes was plenary:

> In regard to the pardon power, the President's sphere is limited. He can only pardon those offenses which are "against the United States." But in this sphere, his power, like any constitutional power, must be supreme. It cannot be hindered by the operation of the subordinate governments. The pardon power would be ineffective if it could only restore a convict's federal civil rights. The pardoned person would still suffer numerous handicaps and would not receive the benefits of what the President in granting a full pardon would seem to intend — that the person be reinstated to his full rights as a citizen.

Id. at 129. The court concluded that "the power to punish for a conviction which has been pardoned is the power to vitiate and destroy a presidential pardon." *Id.*

The Seventh Circuit's decision in *Bjerkan* simply cannot be reconciled with the decision below. The Seventh Circuit expressly held that a presidential pardon nullifies *all* disabilities — including a disability that affects the "right to work in certain professions" — which attach solely by virtue of the underlying federal conviction. The disability at issue in this case falls squarely into this category: indeed, that disability, unlike the disabilities discussed in *Bjerkan*, arises solely by operation of federal, rather than state, law. *See supra* note 5. This Court's intervention is warranted to resolve this stark conflict on a fundamental question of constitutional law.[7]

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[7] A number of state courts, citing this Court's precedents on the scope of the federal Pardon Clause, have reached the identical conclusion as the *Bjerkan* court with respect to the scope of a governor's pardon power under analogous state constitutional provisions — often in the specific context of cases involving attorneys seeking readmission to the Bar. *See, e.g., Scott v. State*, 25 S.W. 337, 339 (Tex. Ct. Civ. App. 1894) (holding that pardoned attorney disbarred under automatic-disbarment provision for persons "convicted of a felony" was entitled to reinstatement on ground that disbarment was founded on a statute "declaring the effect of the felony

C. The Question Presented Is A Recurring One Of Exceptional Importance.

Finally, the D.C. Court of Appeals' decision will have potentially enormous consequences for the many recipients of presidential pardons.[8] Many States impose substantial disabilities on individuals who are convicted of felonies (whether state or federal), including permanent or temporary restrictions on the rights to vote, carry firearms, accept public employment, serve as jurors, hold public office, retain child custody, and (as here) serve as a member of the Bar. *See* Kathleen M. Olivares et al., *The Collateral Consequences of a Felony Conviction*, Fed. Probation, Sept. 1996, at 10, 11-14. In fact, the extent to which States restrict the rights of felons has been increasing in recent years. *See id.* at 14-15. The implications of the D.C. Court of Appeals' decision are therefore breathtakingly broad. By allowing disabilities that depend solely on a federal conviction to remain in effect even when the conviction has been nullified by a full and unconditional presidential pardon,[9] the decision below greatly

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conviction," rather than on "facts showing professional misconduct"); *In re Enmons*, 154 P. 619, 621 (Cal. Ct. App. 1915) (same); *Ex parte Crisler*, 132 So. 103, 104 (Miss. 1931) (likewise reinstating attorney and distinguishing between cases in which attorney is disbarred "as part of the punishment for the commission of the crime" and cases in which attorney is disbarred "on account of professional misconduct involved in the transaction which culminated in his conviction and pardon"); *Slater v. Olson*, 299 N.W. 879, 880-81 (Iowa 1941) (stating that pardon of applicant for civil service "relieves [him] not only from the punishment which the law inflicts for the crime but also exempts him from additional penalties and legal consequences in the form of disqualifications or disabilities based on his conviction").

[8] President Clinton, for example, took some 456 clemency actions (a figure that comprises both pardons and commutations). *See* Richard W. Stevenson, *A Presidential Power This President Uses Rarely*, N.Y. Times, Dec. 25, 2002, at A19.

[9] Of course, the President could impose restrictions or conditions on a pardon, thus allowing any preexisting disability to remain in place.

limits the scope of the presidential pardon power — rendering the exercise of that power a pure formality where, as here, the recipient of the pardon has already completed his or her sentence for the crime.

More than a century ago, this Court held that a presidential pardon restored a convicted felon's capacity to testify, reasoning that the pardon obliterated any "consequence * * * of the judgment of conviction." *See Boyd v. United States*, 142 U.S. 450, 454 (1892).[10] At least where the deprivation turns solely on the fact of conviction, there is no reason to treat deprivation of the right to practice one's chosen profession any differently from deprivation of the right to testify, or of any other right.[11] The D.C. Court of Appeals' decision has sweeping implications and is inconsistent with fundamental constitutional principles. *Certiorari* should be granted.

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[10] Lower state courts have likewise held that presidential pardons nullify other disabilities. *See, e.g., Harbert v. Deukmeijan*, 117 Cal. App. 3d 779, 781-82 (Cal. Ct. App. 1981) (right to carry firearms); *Damiano v. Burge*, 481 S.W.2d 562, 564-67 (Mo. Ct. App. 1972) (right to apply for liquor license).

[11] As noted above, *see supra* note 2, if the D.C. Office of Bar Counsel decides that the twenty-year suspension already served by petitioner is somehow insufficient punishment, it can always commence new disciplinary proceedings against petitioner under other potentially applicable provisions, *see In re Muckelroy*, 609 A.2d 265, 271 (D.C. 1992) (noting that there is no limitations period for disciplinary violations in the District of Columbia).

CONCLUSION

For the foregoing reasons, this Court should grant the petition for *certiorari*.

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